THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.1024 OF 2007

DATED 19th JANUARY, 2007

BETWEEN:

Mr B.Madhukar Rao

… Petitioner

AND

The Revenue Divisional Officer, Vikarabad,
Ranga Reddy District and others.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.1024 OF 2007

ORDER:

The petitioner is owner of residential house bearing door No.4-1-767 situated in Vikarabad town. He purchased the plot in 1965, obtained permission from Vikarabad Panchayat and constructed a house. When the respondents took up the road widening work with a view to widening the existing road, a notice was issued to the petitioner by third respondent for the proposed road widening and the petitioner was asked to vacate the land admeasuring 470 square feet allegedly occupied by him, which forms part of the road margin. The petitioner alleges that no enquiry was conducted but the second respondent started conducting preliminary operations for widening the road. Therefore, the petitioner allegedly sent an objection petition on 10.01.2007, in vain. The petitioner contends that without assessing the damage that would be caused by removal of the structures, the petitioner cannot be dispossessed from the land. Therefore, he filed the instant writ petition seeking a writ of Mandamus declaring the action of the respondents in demolishing the petitioner's building bearing door No.4-1-767, Allampally Road, Vikarabad for widening purpose without assessing the damage as illegal and arbitrary. The petitioner also seeks an order setting aside the show cause notice, dated 13.10.2006 issued by the third respondent.

The learned counsel for the petitioner reiterated various contentions taken in the writ affidavit. **Per contra**, learned Assistant Government Pleader after getting instructions submits that a detailed enquiry was conducted after giving notice to the petitioner and that the petitioner occupied road margin and accordingly he was informed to remove the encroachment. He also submits that the petitioner herein approached the civil Court by filing a suit being O.S.No.322 of 2005 on the file of the Junior Civil Judge, Vikarabad, for perpetual injunction and for an order to make assessment of the damage caused to the petitioner's property, that when he fails to obtain an appropriate injunction order, he filed the present writ petition.

A copy of the plaint as well as I.A., filed in O.S.No.322 of 2005 is placed before this Court. In the said suit, respondents 1 to 3 herein are arrayed as defendants 2, 4 and 5. The petitioner herein who is plaintiff in the suit prayed for perpetual injunction restraining the defendants from demolishing the suit schedule property bearing house No.4-1-767 and also for an order to direct the defendants to make appropriate

assessment of the loss caused to the suit property. As rightly pointed out, in this writ petition also a similar relief is sought.

The question, therefore, is whether the petitioner having already approached the civil Court for a similar relief can file a writ petition again under Article 226 of Constitution of India. The question is no more *res integra*. When once a person files a suit before the civil Court, a writ petition ordinarily would not lie. All petitions that are filed have to be agitated before the civil Court after adducing necessary evidence.

A reference may be made to the decisions of the Supreme Court in **K.S.Rashid v ITI Commission**[1], **Carl Still G.M.B.H. v State of Bihar**[2] and **Jai Singh v Union of India**[3]. In **K.S.Rashid** (supra), a Constitution Bench of the Supreme Court held as follows.

> So far as the second point is concerned, the High court relies upon the ordinary rule of construction that where the legislature has passed a new statute giving a new remedy, that remedy is the only one which could be pursued. It is said that the Taxation on Income (Investigation Commission) Act, 1947, itself provides a remedy against any wrong or' illegal order of the Investigating Commission and under section 8 (5) of the Act, the aggrieved party can apply to the appropriate Commissioner of Income-tax to refer to the High court any question of law arising out of such order and thereupon the provisions of S. 66 and 66-A of the Indian Income-tax Act shall apply with this modification that the reference shall be heard by a bench of not less than three Judges of the High court. We think that it is not necessary for us to express any final opinion in this case as to whether section 8 (5) of the Act is to be regarded as providing the only remedy available to the aggrieved party and that it excludes altogether the remedy provided for under article 226 of the Constitution. For purposes of this case it is enough to state that the remedy provided for in article 226 of the Constitution is a discretionary remedy and the High court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere.

In **Jai Singh** (supra), the Supreme Court observed that when there are serious questions of disputed facts this Court need not exercise jurisdiction under Article 226 of the Constitution of India. It was observed therein thus:

> The High court dismissed the writ petition on the ground that it involved determination of disputed questions of fact. It was also observed that the High court should not in exercise of its extraordinary jurisdiction grant relief to the appellant when he had an alternative remedy. After hearing Mr.

> Sobhagmal Jain on behalf of the appellant, we see no cogent ground to take a view different from that taken by the High court. There cannot, in our opinion, be any doubt on the point that the extent of purity of the gypsum won by the appellant is a question of fact. It has also been brought to our notice that after the dismissal of the writ petition by the High court, the appellant has filed a suit, in which he has agitated the same question which is the subject-matter of the writ petition. In our opinion, the appellant cannot pursue two parallel remedies in respect of the same matter at the same time.

In **Carl Still** (supra), another Constitution Bench considered the question and held:

> It is next contended for the respondents that, whatever the merits of the contentions based on the construction of the contract, the proper forum to agitate them would be the authorities constituted under the Act to hear and decide disputes relating to assessment of tax, that it was open to the appellants to satisfy those authorities that there have been no sales such as are liable to be taxed, that indeed they were bound to pursue the remedies under the Act before they could invoke the jurisdiction of the court under Art. 226 and that the learned Judges of the High court were, therefore, right in declining to entertain the present petitions. It is true that if a statute sets up a tribunal and confides to it jurisdiction over certain matters and if a proceeding is properly taken before it in respect of such matters, the High court will not, in the exercise of its extraordinary jurisdiction under Art. 226, issue a prerogative writ so as to remove the proceedings out of the hands of the tribunal or interfere with their course before it. But it is equally well settled that, when proceedings are taken before a tribunal under a provision of law, which is ultra vires, it is open to a party aggrieved thereby to move the court under Art. 226 for issuing appropriate writs for quashing them on the ground that they are incompetent, without his being obliged to wait until those proceedings run their full course.

The petitioner has to agitate the matter before the civil Court. It is brought to the notice of this Court that the respondents have already filed written statement in the suit. Therefore, the Court of the Junior Civil Judge, Vikarabad, may complete the trial and dispose of the suit within a period of four months from the date of receipt of copy of this order, excluding the Court vacation period.

The writ petition is accordingly dismissed. No costs.

(V.V.S.RAO,J)

19.01.2007.
pln

Note: Dispatch copy of this order
to the Junior Civil Judge, Vikarabad.
(By order)
pln

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[1] AIR 1954 SC 207

[2] AIR 1961 SC 1615

[3] AIR 1977 SC 898